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**ORIGINAL**

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BY HAND

June 16, 2008

Hon. Anne K. Quinlan, Secretary  
Surface Transportation Board  
365 E Street, S.W.  
Washington, D.C. 20423

**RE: STB Finance Docket No.35154, City of Chicago  
Petition for a Declaratory Order -  
Cherry Avenue Bridge**

**ENTERED**  
Office of Proceedings  
**JUN 17 2008**  
Part of  
Public Record

Dear Ms. Quinlan:

On behalf of the City of Chicago (the City), I am filing an original and 10 copies of a Petition for a Declaratory Order along with supporting exhibits and a letter requesting a filing fee waiver. In order to expedite the Board's consideration of this Petition, I am enclosing a filing fee check from the Chicago Terminal Railroad Company for \$1400 which the City requests be returned or, if cashed, be refunded should the fee waiver request be granted.

Please date stamp and return one copy of this letter and filing.

Sincerely yours,

  
John D. Heffner

Enclosures

cc: Steven Holler, Esq.  
Meerreen Sherwani, Esq.  
Robert Leavitt, Esq.  
Mr. Edwin Ellis

**FILED**

**JUN 16 2008**

**SURFACE  
TRANSPORTATION BOARD**

**FEE RECEIVED**

**JUN 16 2008**

**SURFACE  
TRANSPORTATION BOARD**

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365 E Street, S.W.  
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**RE: STB Finance Docket No.35154, City of Chicago  
Petition for a Declaratory Order -  
Cherry Avenue Bridge**

**Filing Fee Waiver**

Dear Ms. Quinlan:

I am writing on behalf of the City of Chicago, IL (the City) to request a filing fee waiver in connection with the above-referenced Petition for a Declaratory Order that is being submitted concurrently.

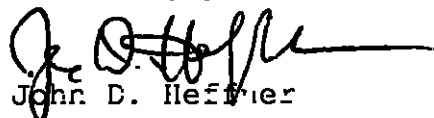
Under its regulations at 49 CFR 1002.2(e), the Board is authorized to grant a request by a state or local government entity for waiver of the applicable filing fees when that waiver would be in the public interest. The City of Chicago is a duly constituted public agency and political subdivision established under the laws of the State of Illinois. The City believes that it has satisfied the "best interest of the public" standard of 49 CFR 1002.2(e) (2) (ii). The City desires to acquire and rehabilitate a historically significant railroad bridge that provides nonvehicular and pedestrian access to a section of the City known as Goose Island. Because this bridge is currently owned and used for railroad operations by the Chicago Terminal Railroad Company, the City is filing this Petition to obtain a ruling that its acquisition of the bridge will not render it a railroad common carrier subject to the Board's jurisdiction under

precedent such as Maine, DOT - Act. Exemption, Me. Central R. Co., 2 I.C.C.2d 835 (1991). This project has substantial public support.

Additionally, the City is not currently a "rail carrier" within the meaning of the ICC Termination Act and the Board's regulations and has no plans to become a "rail carrier." Therefore, the City believes that it is entitled to a fee waiver and requests that one be granted. However, in the interest of expediency, I am enclosing a filing fee check from the Chicago Terminal Railroad in support of the City's request. The Agreement between the City and the Railroad provides that the City will reimburse the Railroad for fees and expenses incurred with this transaction at closing. Accordingly, the City requests that the Board either return this check unused or, in the event the check is cashed, issue a refund check payable to either the City of Chicago or the Chicago Terminal Railroad.

I appreciate your attention to this matter. Please date stamp and return one copy of this letter with the Petition and related matters

Sincerely yours,



John D. Heffner  
Counsel for the  
City of Chicago

Cc: Steven Holler, Esq.  
Mr. Edwir Ellis

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



**FINANCE DOCKET NO. 35154**

**CITY OF CHICAGO  
PETITION FOR A DECLARATORY ORDER  
- CHERRY AVENUE BRIDGE -**

Respectfully submitted,

John D. Heffner  
John D. Heffner, PLLC  
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(202) 296-3334

Of counsel:  
Steven Holler  
Department of Law  
City of Chicago  
121 North LaSalle Street  
Room 600  
Chicago, IL 60602  
312-744-6934

Dated: June 16, 2008

**Expedited consideration requested**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 35154**

**CITY OF CHICAGO  
PETITION FOR A DECLARATORY ORDER  
- CHERRY AVENUE BRIDGE -**

**INTRODUCTION**

Pursuant to 5 U.S.C. 554(c) and 49 U.S.C. 721, the Chicago of Chicago, IL (hereafter “the City”) submits this Petition for a Declaratory Order to the Board in connection with its acquisition of a historically significant railroad bridge and related air rights (hereafter “the Cherry Avenue Bridge” or more simply “the Bridge”). That Bridge currently forms a part of the operating property and line of railroad of the Chicago Terminal Railroad Company (“CTM”), a class III short line railroad subject to the Board’s jurisdiction.<sup>1</sup> The City seeks a ruling that its acquisition of the Bridge will not render the City a railroad common carrier subject to the Board’s jurisdiction under precedent such as Maine, DOT – Acq. Exemption, Me. Central R. Co., 8 I.C.C.2d 835 (1991). For the reasons

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<sup>1</sup> CTM is an operating subsidiary owned by Iowa Pacific Holdings, LLC, and its wholly owned subsidiary, Permian Basin Railways

stated herein, the City requests Expedited Consideration with a decision issued on or before August 15, 2008, effective upon service.

### **STATEMENT OF FACTS**

The City of Chicago is a political subdivision of the State of Illinois and one of this country's largest cities. Like many other urban centers, the City is engaged in extensive urban renewal activity. In particular, in 1996 the City adopted certain ordinances approving a Tax Increment Redevelopment Plan and Redevelopment Project for the Goose Island Tax Increment Financing Redevelopment Project Area designating such area as a Redevelopment Project Area. See, Ordinance attached as Exhibit A. Pursuant to that plan the City will be redeveloping and gentrifying a former industrial area on Goose Island. One means of access to Goose Island is provided by means of the Cherry Avenue Bridge, a historically significant structure currently owned by CTM and actively and regularly used by CTM to provide rail freight service to those rail-served industries still located on the island.

CTM is a class III short line railroad operating on Goose Island and owned by short line railroad holding company Iowa Pacific Holdings, LLC ("IPH") and its wholly owned subsidiary Permian Basin Railways. CTM was originally established in December 2006 to acquire and operate

approximately 4.5 miles of track known as the C&E Line formerly owned and operated by the Soo Line Railroad Company doing business as CP Railway.<sup>2</sup> In 2007 CTM expanded by taking over the lease and operation of two additional disconnected railroad properties in the greater Chicago area but some distance from Goose Island.<sup>3</sup>

Under the proposed transaction, the City will purchase the bridge and associated air rights from CTM for \$1.00 with CTM to retain a permanent, exclusive easement for providing all common carrier railroad service over it. The Bridge is a structure that is about 66 feet wide and about 240 feet long spanning the North Branch Canal of the Chicago River in the vicinity of the intersection between W. North Avenue and N. Kingsbury Street. See, Exhibits E and F. The City will refurbish and maintain the Bridge and install a walkway for pedestrian and non-vehicular traffic. The City will be responsible for maintaining the bridge structure in good condition. The railroad will be responsible for maintaining its track and right-of-way

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<sup>2</sup> Chicago Terminal Railroad—Acquisition and Operation Exemption—Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 34968, served December 22, 2006

<sup>3</sup> Chicago Terminal Railroad Lease and Operation Exemption—Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 35101, November 30, 2007, Chicago Terminal Railroad—Acquisition and Operation Exemption—Rail Lines of Union Pacific Railroad Company and Canadian Pacific Rail System at Elk Grove Village, Cook and DuPage Counties, IL, STB Finance Docket No. 35005, served March 30, 2007

leading to the Bridge as well as all track and railroad-related appliances on the Bridge.

In order to facilitate the Board's understanding and approval of this transaction, the City submits for the Board's consideration the following documents identified respectively as Exhibits A, B, C, D, E, F, G, and H: 1) an Ordinance authorizing the City to purchase the Bridge and associated air rights ; 2) a final copy of the Real Estate Sales Agreement between IPH, CTM, and the City approved by the City Council and ready for signature; 3) a final copy of the Rail Line Easement Agreement between IPH, CTM, and the City approved by the City Council and ready for signature; 4) a final copy of the Operating Agreement between CTM and the City approved by the City Counsel and ready for signature delineating the respective rights and obligations of the parties; 5) a Survey of the Bridge; 6) a Legal Description of the Bridge; 7) a map of CTM's railroad showing the location of the Bridge; and 8) a street map of the North Side of Chicago showing the location of the Bridge.

### ARGUMENT

Pursuant to 5 U.S.C. 554(e) and 49 U.S.C. 721, the Board has the power to issue a declaratory order to terminate a controversy or remove uncertainty. See, e.g., Consolidated Rail Corporation-Petition for



Declaratory Order-C&P Dock, STB Finance Docket No. 33296, served December 13, 1996 (where the Board granted Conrail's request for a declaratory ruling holding that its sale of certain property to a port authority would not be subject to Board regulatory jurisdiction where Conrail would *continue to provide the rail service at that facility*). Moreover, the Board has frequently allowed noncarrier parties seeking a ruling as to whether a particular rail line acquisition is beyond the Board's entry jurisdiction to use the declaratory review provisions of 5 U.S.C. 554(e) and 49 U.S.C. 721 to obtain that relief. State of Wisconsin Department of Transportation-Petition for Declaratory Order, STB Finance Docket No. 34181, served Aug. 1, 2002.

As a general proposition, a bridge is a facility that is included within the definition of the term "railroad" under the I.C.C. Termination Act. 49 U.S.C. 10102(6). Moreover, the former Interstate Commerce Commission has held on at least one occasion that the acquisition and operation of a railroad bridge and related track is a transaction requiring its regulatory approval or an exemption from approval. Albany Bridge Company, Inc. – Acquisition and Operation Exemption – South Carolina Central Railroad Company, Inc., d/b/a Georgia Great Southern Division, Finance Docket No. 32207, served Jan. 13, 1993. Furthermore, the Board and the ICC before it

have stated that when a person, including a state agency or other political subdivision, acquires an active rail line, that entity normally assumes a common carrier obligation at least to assure that service continues on the line. The acquisition of an active rail line and the common carrier obligation that goes with it ordinarily requires Board approval under 49 U.S.C. 10901 or 10902. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Accordingly, the City's acquisition of this Bridge and related air rights would be subject to Board approval or exemption from approval absent a grant of this Petition.

Starting around in the early 1990's, the former Interstate Commerce Commission began issuing a series of decisions commonly referred to as "State of Maine" rulings allowing certain entities, usually public agencies or political subdivisions, to acquire railroad properties including rights-of-way, railroad real estate and facilities, and even railroad tracks and track components without being required to seek ICC or STB authorization. Maine, DOT-Acq. Exemption, Me. Central R. Co., 8 I.C.C.2d 835 (1991).<sup>4</sup>

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<sup>4</sup> The agency has stated that its authorization is not required, however, when the physical assets are being transferred to one entity and the freight easement and common carrier obligation are being transferred to another entity. See State of Vermont- Acquisition Exemption-Certain Assets of Boston & Maine Corporation, STB Finance Docket No. 33830, STB served June 8, 2000, and State of Maine, 8 I.C.C.2d at 836-37

These cases generally involved either of two fact patterns. The first situation involved a railroad, frequently a class I or larger class II railroad, that was exiting the market by selling the right-of-way and track of a light density line to a public agency that would preserve rail service by owning the asset with the selling railroad granting an exclusive permanent operating easement over those assets to a smaller short line or regional railroad. State of Wisconsin Department of Transportation—Petition for Declaratory Order, STB Finance Docket No. 34623, STB served Dec. 23, 2004 (involving the purchase of a Canadian National rail line by the State of Wisconsin and the conveyance of a permanent exclusive rail operating easement to the Wisconsin & Southern Railroad). The second scenario involved a railroad, often the owning short line or regional railroad, selling the physical assets to a public agency with the seller retaining (or in some cases being granted back by the public agency) an exclusive permanent operating easement for the purpose of continuing to provide rail service over that property. State of Georgia, Department of Transportation—Petition for Declaratory, STB Finance Docket No. 34665, STB served April 14, 2005 (involving the acquisition by the State of a rail line owned and operated by Georgia & Florida RailNet, Inc., with the seller retaining an easement to operate the line). In each of these two situations the ICC and the Board ruled that the

**purchaser of the property was not subject to its regulatory jurisdiction under 49 U.S.C. 10901 or 10902 provided the transaction had certain characteristics.**

**Among others, the ICC and the Board have found the following factors are indicative of an acquisition outside the agency's carrier acquisition jurisdiction under 49 U.S.C. 10901 or 10902:**

- the purchaser will not conduct operations or hold itself out as a railroad common carrier**
- the railroad operator will have an unrestricted right to operate over the acquired rail line or rail property**
- the purchaser has no right to interfere with the railroad's operations and maintenance including any aspect of rates, services, train frequency and schedules, or termination of service**
- the purchaser must coordinate its activities including those involving joint use of the property, maintenance, improvement, and inspection of facilities with the railroad so as to avoid interference with train service**

- the railroad operator retains a sufficient interest in and control over the property to fulfill its common carrier obligations

See, e.g., State of Wisconsin Department of Transportation–Petition for Declaratory Order, STB Finance Docket No. 34181, served August 1, 2002; State of Vermont Acquisition Exemption, Et Al, STB Finance Docket No. 34294, served May 22, 2003; and State of Georgia Department of Transportation - Acquisition Exemption, Et Al, STB Finance Docket No. 33690, served June 23, 1999 (In those cases the Board observed that the record shows that the purchaser will only be acquiring the physical rail assets of the subject rail line and will not become a rail carrier subject to the Board’s jurisdiction; the purchaser will not hold itself out as a common carrier performing rail freight service as a result of the transaction or have the power to control or interfere with the railroad’s operations or maintenance; and the railroad is not transferring common carrier rights or obligations to the purchaser and will have the ability to provide unrestricted freight service over the subject line).

As the documents submitted as Exhibits B, C, and D demonstrate, the City and CTM have carefully structured this transaction to ensure that the City will not become a railroad common carrier. The overriding purpose of

this transaction is cultural and recreational: to preserve and improve a historically significant railroad bridge linking Goose Island with the rest of the City and to allow pedestrians and cyclists to traverse it. Ordinance, Exhibit A; Rail Line Easement Agreement, Recital D, Exhibit C. Section 2(a) of the Operating Agreement, Exhibit D, specifically states that CTM will be the *only* entity providing common carrier railroad service over the Bridge and grants CTM a sufficient interest in and control over the property to fulfill its common carrier obligations. See also, Rail line Easement Agreement Sections 2 and 5, Exhibit C. Sections 3(b), 5(b), and 5(c) of the Operating Agreement prohibit the City from interfering with, providing or operating train service or holding itself out as a railroad common carrier and require the City to coordinate all joint use, maintenance, improvement, and inspection activity with CTM so as to avoid any interference with railroad operations and maintenance activities. Moreover, Sections 4(1), 4(2), and 5(b) of the Operating agreement make clear that CTM has an unrestricted right of access to the railroad line over the Bridge and the City has no right to interfere with the railroad's operations and maintenance including any aspect of rates, services, train frequency and schedules, or termination of service. See also, Real Estate Sales Agreement, Exhibit B at Sections IV (B) (1), VI, and XIX. In the event of termination, Section 2(c) of the Operating

Agreement specifically provides that CTM's common carrier and rail service obligation continues until CTM or a third party obtains abandonment or discontinuance authority from the Board under 49 U.S.C. 10901. Likewise, Section 2 of the Rail Line Easement Agreement, Exhibit C, makes clear that the railroad's common carrier obligation does not terminate absent STB discontinuance or abandonment authority should the easement terminate by operation of law.

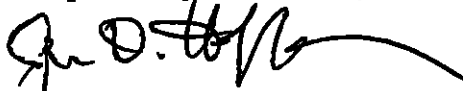
### **EXPEDITED AUTHORITY REQUESTED**

Section III (B) of the Real State Sales Agreement contemplates a prompt closing with CTM so that the City can begin work to refurbish this century-old historic railroad bridge during good weather. Accordingly, the parties request a decision on or before August 15, 2008, effective upon service, to allow a closing to be scheduled during the latter part of August.

### **CONCLUSION**

Wherefore the City of Chicago requests that the Board consider and promptly approve its request for a declaratory ruling that it will not become a rail carrier subject to the Board's jurisdiction by reason of acquiring the Cherry Avenue Bridge and related air rights.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John D. Heffner", with a long, sweeping horizontal line extending to the right.

John D. Heffner  
John D. Heffner, PLLC  
1750 K Street, N.W.  
Suite 350  
Washington, D.C. 20006  
(202) 296-3334

Of counsel:  
Steven Holler  
Department of Law  
City of Chicago  
121 North LaSalle Street  
Room 600  
Chicago, IL 60602  
312-744-6934

Dated: June 16, 2008



## **EXHIBIT A**

## **ORDINANCE**

**WHEREAS**, the City of Chicago (the "City") is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970, and as such, may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, the City Council of the City (the "City Council") has previously adopted certain ordinances on July 10, 1996 and published in the Journal of Proceedings of the City Council for such date at pages 2466 through 25761 approving a Tax Increment Redevelopment Plan and Redevelopment Project (the "Plan") for the Goose Island Tax Increment Financing Redevelopment Project Area (the "Area"), designating such area as a Redevelopment Project Area pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq (the "TIF Act"), and adopting tax increment financing for the area pursuant to the TIF Act; and

**WHEREAS**, Chicago Terminal Railroad Company, an Illinois corporation (the "Railroad") is the owner of that certain parcel of real estate and associated air rights legally described on Exhibit A attached hereto and depicted on Exhibit B attached hereto (together with all rights, interests, privileges and appurtenances thereto, the "Real Property"), which Real Property is improved with a single track rail line, a steel bridge traversing the North Branch Canal of the North Branch of the Chicago River (the "Cherry Avenue Bridge"), and certain improvements ancillary to such rail line and bridge operation (the Cherry Avenue Bridge and such improvements, collectively, the "Railroad Improvements," and, together with the Real Property and any tangible and intangible property related thereto and owned by the Railroad, the "Property"), and

**WHEREAS**, a portion of the Railroad Improvements and Real Property is located in the Area; and

**WHEREAS**, the City, acting by and through its Department of Transportation ("CDOT"), desires to purchase the Property from the Railroad for One Dollar (\$1.00) in order to preserve and rehabilitate the Cherry Avenue Bridge, which is a historically and architecturally significant structure, and to improve the bridge to include a pedestrian walkway that will provide new pedestrian and non-vehicular access to Goose Island; and

**WHEREAS**, the Railroad is willing to sell the Property to the City for One Dollar (\$1.00), subject to the parties entering into a Real Estate Sales Agreement in substantially the form attached hereto as Exhibit C and provided that the City grant back to the Railroad an easement for railroad operations in accordance with the terms and conditions of a Rail Line Easement Agreement substantially in the form attached hereto as Exhibit D; now, therefore,

### **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

**SECTION 1.** The above recitals are incorporated herein and made a part hereof.

**SECTION 2** The City's purchase of the Property from the Railroad for One Dollar (\$1.00), subject to the execution by the City and the Railroad of a Real Estate Sales Agreement in substantially the form attached hereto as Exhibit C, and subject to the review and approval of the Commissioner of CDOT ("Commissioner") and the Corporation Counsel, is

hereby approved

**SECTION 3.** Subject to and as a part of the closing of such purchase, the Mayor or his proxy is authorized to execute, and the City Clerk to attest, a Rail Line Easement Agreement in substantially the form attached hereto as Exhibit D, subject to the review and approval of the Commissioner and the Corporation Counsel

**SECTION 4** The Commissioner, or a designee of the Commissioner is each hereby authorized, with the approval of the Corporation Counsel as to form and legality, to negotiate, execute and deliver the Real Estate Sales Agreement in substantially the form attached hereto as Exhibit C and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Real Estate Sales Agreement, to obtain any necessary governmental approvals (and to pay the cost of obtaining any such approvals, including, without limitation, attorney's and filing fees) and otherwise related to the acquisition of the Property, the rehabilitation of the Railroad Improvements and the construction of the new improvements ancillary thereto, with such changes, deletions and insertions as shall be approved by the Commissioner or such designee, with the approval of the Corporation Counsel

**SECTION 5.** If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

**SECTION 6** All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

**SECTION 7.** This ordinance shall be in full force and effect immediately upon its passage and approval

Attachments    Exhibit A - Legal Description of Real Property  
                     Exhibit B - Depiction of Real Property  
                     Exhibit C - Real Estate Sales Agreement  
                     Exhibit D - Rail Line Easement Agreement

**EXHIBIT A**

**LEGAL DESCRIPTION OF REAL PROPERTY**

**[See Attachment; Subject to Final Title and Survey]**

## **EXHIBIT B**

,

## REAL ESTATE SALES AGREEMENT

This **REAL ESTATE SALES AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between **CHICAGO TERMINAL RAILROAD COMPANY**, an Illinois corporation ("**Railroad**"), and the **CITY OF CHICAGO**, an Illinois municipal corporation ("**City**"), acting by and through its Department of Transportation ("**CDOT**"), having its principal offices at 30 North LaSalle Street, 11<sup>th</sup> Floor, Chicago, Illinois 60602.

### RECITALS

**WHEREAS**, Railroad is the owner of that certain parcel of real estate and associated air rights described on Exhibit A attached hereto and depicted on Exhibit B attached hereto (together with all rights, interests, privileges and appurtenances thereto, the "**Real Property**"); and

**WHEREAS**, the Real Property is improved with a steel bridge traversing the North Branch Canal of the North Branch of the Chicago River that includes a single track rail line, certain walkways on both sides of the rail line and ancillary bridge infrastructure (such improvements, but expressly excluding the actual track, ties, ballast, and other track materials, signals and switches, if any, and excluding any rolling stock or communications equipment or facilities, if any, the "**Railroad Improvements**," and, together with the Real Property and excluding any tangible and intangible property related thereto and owned by Railroad, the "**Property**"), and

**WHEREAS**, the City desires to purchase the Property from Railroad and Railroad desires to sell the Property to the City upon the terms and conditions described in this Agreement;

**NOW, THEREFORE**, in consideration of the promises and the mutual obligations of the parties hereto, each of them hereby covenant and agree with the other as follows.

### **SECTION I. REPRESENTATIONS AND WARRANTIES.**

**A. Representations and Warranties of Railroad.** To induce the City to execute this Agreement and perform the obligations of the City hereunder, Railroad hereby represents and warrants to the City as follows:

- (1) Railroad's execution, delivery and recording of this Agreement has been duly authorized by all requisite corporation action;
- (2) Railroad has full power and authority to execute this Agreement, to convey the Property and perform its other obligations hereunder;
- (3) As of the Closing (as defined in Section III.A below), no other person,

entity or governmental body will have any ownership or use rights with respect to the Property, except the Railroad and those rights granted to Railroad pursuant to the Rail Linc Easement Agreement attached hereto as Exhibit C (the "Easement Agreement"), and except to the extent required by law or regulation;

(4) this Agreement constitutes the legally valid and binding obligation of Railroad and is enforceable in accordance with its terms;

(5) no litigation or proceedings are pending or, to Railroad's actual knowledge, are threatened against Railroad or any party controlling or controlled by Railroad which could materially affect the ability of Railroad to perform its obligations in accordance with the terms of this Agreement;

(6) the execution, delivery and performance by Railroad of this Agreement have not constituted or will not, upon the giving of notice or lapse of time, or both, constitute a material breach or default under any other agreement which may materially affect the Property to which Railroad or any party controlling or controlled by Railroad is a party or may be bound or affected, or a violation of any law or court order which may materially affect the Property, any part thereof, any interest therein or the use thereof;

(7) Railroad has not received any notice, and has no actual knowledge that the current condition or use of the Property violates: (a) any statute, law, regulation, rule, ordinance or executive or judicial order of any kind (including, without limitation, zoning and building laws, ordinances, codes or approvals and environmental protection laws or regulations); or (b) any building permit, restriction of record or any agreement affecting the Property or any part thereof;

(8) Except for mortgages and other liens, if any, which Railroad has placed or caused to be placed upon the Property, after Railroad's acquisition thereof, if any, which can and shall be satisfied by the payment of money at the Closing, and except for real estate taxes and assessments not due and payable, Railroad has not: (a) granted, suffered or permitted any lien, claim or encumbrance upon the Property or any portion thereof which Railroad has placed or caused to be placed upon the Property, after Railroad's acquisition thereof; (b) permitted or suffered any levy, attachment, claim or restraint to be made affecting the Property which Railroad has placed or caused to be placed upon the Property, after Railroad's acquisition thereof; or (c) executed any leases, licenses, easements, service or other use agreements for the Property which will not be terminated at or before Closing, except for its agreement(s) with \_\_\_\_\_ (the "Existing Customer"); and

(9) All of the information disclosed or documents furnished to the City or any of its representatives by Railroad or its representatives pursuant to the terms of this Agreement is true in all material respects. To the actual knowledge of the manager of the Railroad, there is no fact which materially adversely affects or in the future is likely to

materially adversely affect the Property or the City's use of the Property for pedestrian, bicycle and similar non-vehicular usage in any material respect that has not been set forth or referred to in this Agreement or that Railroad has not otherwise disclosed in writing to the City.

**B. Representations and Warranties of the City.** To induce Railroad to execute this Agreement and perform the obligations of Railroad hereunder, the City hereby represents and warrants to Railroad as follows:

(1) The execution of this Agreement by the City and the performance of its obligations hereunder (including funding for the bridge improvement work) have been approved by an ordinance adopted by the City Council of the City of Chicago on \_\_\_\_\_, 2008;

(2) To the best of the City's knowledge, the performance by the City of its obligations hereunder will not violate any other agreement to which the City is a party or any law, court order or decree by which the City is bound; and

(3) To the best of the City's knowledge, there is no litigation pending against the City that could prevent the City from performing its obligations in accordance with the terms of this Agreement.

(4) The City has obtained authority or exemption from authority from the federal Surface Transportation Board (the "Board") permitting it to acquire the Property or a ruling from the Board that no such authority or exemption is necessary for such acquisition.

**C. Survival of Representations, Warranties.** The parties agree that all of their respective representations and warranties set forth in this Section I or elsewhere in this Agreement are true as of the Closing Date. The continued accuracy of the representations and warranties shall be a condition precedent to the obligation of the parties to close the transaction contemplated by this Agreement. In addition, the parties agree that their liability for a breach of their respective representations and warranties shall survive termination of this Agreement or the Closing (whichever should occur) for a period of one year.

## **SECTION II. SALE AND PURCHASE PRICE.**

Subject to the terms, covenants and conditions of this Agreement, the City agrees to purchase the Property from Railroad, and Railroad agrees to sell the Property to the City for consideration of (a) the sum of One Dollar and No/100 (\$1.00) ("Purchase Price"), (b) the City's execution and delivery of the Easement Agreement, and (c) the City's performance of the Railroad Improvement Work (as defined below).



### **SECTION III. CONVEYANCE OF PROPERTY.**

**A. Form of Deed.** Railroad shall convey to the City all of Railroad's interest in and to the Property by Quitclaim Deed ("Deed") subject to the terms and conditions set forth in this Agreement, the Easement Agreement and the Deed. In the event that the City discovers prior to Closing any material Encumbrances (as hereinafter defined) upon the Property, the City, at its sole discretion, may either: (a) accept title to the Property subject to such Encumbrance; or (b) terminate this Agreement by written notice to the Railroad at any time prior to the Closing. Subject to the foregoing, if the City elects to close and acquire the Property, the City shall be deemed to have taken subject to all recorded and unrecorded easements, licenses, permits, liens or agreements affecting the Property. The Deed shall be duly executed and acknowledged by Railroad and in proper form for recording. The parties shall cooperate in agreeing upon the final legal description that shall be attached to the Deed, which shall replace the legal description included Exhibit A to this Agreement, based on the City's Survey, title evidence and due diligence. Such legal description shall, at a minimum, have boundaries that shall include all of the Railroad Improvements and establish contiguity both on the north and south with the existing City right of way for North Cherry Avenue, and convey to the City all of the Railroad's right, title and interest in the Real Property located between such northern and southern boundaries. If the parties are unable to agree upon such legal description, the City may terminate this Agreement by written notice to the Railroad at any time prior to the Closing.

As to the physical condition of the Property, the City agrees to accept the Property "AS IS, WHERE IS" and with all faults except for the specific representations, warranties expressed in the Deed, this Agreement or any other instrument executed simultaneously with this Agreement or at Closing.

"Encumbrances" shall mean any charge, claim, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership

**B. The Closing.** The closing of the transaction contemplated by this Agreement ("Closing") shall take place at the downtown offices of Chicago Title Insurance Company ("Title Company") within 90 days of the date set forth in Section 1.B(1) above or at such other date and time as the parties may agree to, but in no event later than December 31, 2008. The date upon which the transaction contemplated by this Agreement actually closes is hereinafter called the "Closing Date."

**C. Escrow.** The Property shall be conveyed by Railroad to the City in accordance with the provisions described in the usual form of deed and money escrow instructions utilized by the Title Company, with such special instructions as may be required to conform such instructions with this Agreement. In the event of any conflict between the escrow instructions

and this Agreement, the terms of this Agreement shall prevail. The cost of the escrow and a "New York Style" closing shall be divided equally between the parties.

**D. Pre-Closing Charges.** The City shall be responsible for obtaining any applicable residential zoning certification and water certification fees applicable to the Property. At the Closing, Railroad shall use commercially reasonable efforts to deliver evidence from the applicable governmental authorities (other than the City), utility companies and third parties that all charges, fees or other costs and expenses applicable to the Railroad's ownership and operation of the Property (collectively, all such amounts, "Pre-Closing Charges"). To the extent any such Pre-Closing Charges have not been finally determined or billed or are otherwise not yet due and payable, Railroad agrees to make timely payment of all such Pre-Closing Charges after the Closing Date as and when the same become due. The Railroad agrees to indemnify, defend and hold the City harmless from and against the payment of any such Pre-Closing Charges and any claims arising therefrom. In no instance shall the City be deemed to have agreed to assume the payment of such Pre-Closing Charges by virtue of its acceptance of the Deed, and the obligation to pay such Pre-Closing Charges shall not merge with, but shall survive, the delivery of the Deed. The parties shall cooperate in executing any necessary tax parcel identification number division forms as may be necessary to reflect the conveyance of the Property to the City.

**E. Brokers.** The parties represent and warrant to each other that no person or entity has been engaged, utilized, or dealt with that would be entitled to a broker's commission or finder's fee in connection with the sale of the Property. In the event that any claim is asserted for such commission or fee, the party deemed to be responsible for such claim shall indemnify, defend and hold the non-responsible party harmless from and against any such claim.

**F. Compliance with Applicable Laws.** The parties shall comply with all applicable federal, state and local laws and regulations governing the sale of the Property.

**G. Date of Possession.** Railroad shall deliver possession of the Property to the City at the Closing free and clear of all claims of title, possession or use by any other third party (excluding only Railroad and the Existing Customer), and subject to the Permitted Exceptions.

**H. Closing Obligations.** At or before the Closing, Railroad shall deliver to City or the Title Company to hold in escrow the Deed, and such other assignments, documents and other instruments of transfer and conveyance as may be required to effect the terms of this Agreement, each in form and substance mutually agreed upon between City and Railroad. At or before the Closing, City shall deliver to Railroad or the Title Company to hold in escrow the Easement Agreement, duly executed and in proper form for recording, and such other assignments, documents and other instruments of transfer and conveyance as may be required to effect the terms of this Agreement, each in form and substance mutually agreed upon between City and Railroad.

#### **SECTION IV. CONDITIONS TO CLOSING.**

**A. The City's Conditions To Closing.** The obligation of the City to consummate the transaction contemplated in this Agreement is subject to the following conditions, any of which may be waived by the City on or before the Closing Date, and subject to any other termination rights granted to the City under this Agreement:

(1) The Property shall not have been adversely affected in any material way as a result of any condemnation, fire, flood, act of God or the public enemy, unavoidable cause, accident or other casualty;

(2) There shall be no administrative action, litigation or other governmental proceedings of any kind pending or threatened against Railroad or the Property that would materially adversely affect the value of the Property;

(3) There shall have occurred no material adverse change to any aspect of the Property unless the change is contemplated by this Agreement;

(4) This Agreement shall not have been terminated by either party in accordance with the terms hereof;

(5) The City, at its expense, shall have obtained such survey of the Property as the City deems necessary or appropriate (the "Survey");

(6) The City at its expense, shall have obtained the commitment of the title company to deliver to the City on the Closing Date an ALTA owner's policy of title insurance, insuring fee simple title to the Property in the City, and containing such endorsements as the City deems necessary or appropriate (the "City Title Policy"). Prior to the Closing Date, the Railroad shall also make available to the City such title and survey materials as it has its possession;

(7) The City Council shall have approved the City's execution and delivery of, and performance under, this Agreement, and

(8) There shall have been no material breach by Railroad in the performance of its covenants and agreements herein; each of Railroad's representations and warranties contained or referred to herein shall be true and correct on the Closing Date (except for representations made as of a specific date, which shall continue to be true as of such date and changes therein specifically permitted by this Agreement or resulting from any transaction expressly consented to in writing by the City or any transaction contemplated by this Agreement); and there shall have been delivered to the City a certificate to such effect, dated the Closing Date, executed by Railroad.

**B. Railroad's Conditions To Close.** The obligation of Railroad to consummate the transaction contemplated in this Agreement is subject to the following conditions, any of which may be waived by the Railroad on or before the Closing Date:

(1) The City shall have obtained any governmental approvals required under applicable law and regulations and fulfilled any conditions required by the Surface Transportation Board, the Federal Railroad Administration, or any other federal or state department, division, or governmental or quasi-governmental body having jurisdiction over the Property that may be imposed as a condition of consummation of the transaction contemplated hereby, or shall otherwise have satisfied itself that the rights granted under the Easement Agreement permit the Seller to continue to conduct its continued rail operations and do not give the City the right to prevent the Seller from conducting such operations.

(2) There shall have been no material breach by the City in the performance of its covenants and agreements herein; each of the City's representations and warranties contained or referred to herein shall be true and correct on the Closing Date (except for representations made as of a specific date, which shall continue to be true as of such date and changes therein specifically permitted by this Agreement or resulting from any transaction expressly consented to in writing by Railroad or any transaction contemplated by this Agreement); and there shall have been delivered Railroad a certificate to such effect, dated the Closing Date, executed by the City.

(3) The City shall have delivered to the Railroad a copy of the Survey for the purpose of finalizing the legal description pursuant to Section III(A) above.

(4) The City shall have reimbursed the Railroad and/or Iowa Pacific Holdings, LLC for any expenses incurred in preparing and filing the necessary documentation for any consents or approvals required from the Surface Transportation Board that may be necessary for the conveyance of the Property to occur or that may be otherwise be desired by the City, and for this Agreement to be effective.

## **SECTION V. ENVIRONMENTAL MATTERS.**

**A. Representations and Warranties.** Railroad hereby represents and warrants to the City as follows:

(1) To Railroad's actual knowledge, since Railroad's acquisition of the Property on March 15, 2007, the Railroad has neither taken nor permitted any action which would cause a violation of any Environmental Laws (as defined herein), or permitted any known violation of any Environmental Laws to go unremedied, and to its actual knowledge, during such time, no Hazardous Materials (as defined herein) have been generated at, treated at, stored at, disposed of, released into, or deposited upon or

below the surface of the Property or over which the Property spans, provided, however, that Railroad may temporarily have stored and/or transported Hazardous Materials for its customers on or over the Property. As used herein, the term "**Hazardous Materials**" means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), petroleum or crude oil or any fraction thereof, natural gas, source material, special nuclear material, and byproduct materials regulated under the Atomic Energy Act (42 U.S.C. §2011, et seq.), pesticides regulated under the Federal Insecticide Fungicide and Rodenticide Act (7 U.S.C. §136, et seq.), and any hazardous waste, toxic or dangerous substance or related material, including any material defined or treated as a hazardous material, hazardous waste, toxic substance or contaminant (or comparable term) under any federal, state or local environmental laws. As used herein, the term "**Environmental Laws**" means all laws relating to environmental matters including, without limitation, those relating to fines, orders, injunctions, penalties, damages, contribution, cost recovery compensation, losses or injuries resulting from the release or threatened release of Hazardous Materials and to the generation, use, storage, transportation or disposal of Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. §2601 et seq.), the Safe Drinking Water Act (42 U.S.C. §300f-§300j-11 et seq.), the Occupational Safety and Health Act of 1970 (29 U.S.C. §651 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §11001 et seq.), the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.), and the Municipal Code of the City of Chicago, each as heretofore and hereafter amended or supplemented, and any analogous future or present local, state or federal statutes, rules and regulations promulgated thereunder or pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive regulating, relating to or imposing liability standards of conduct concerning any Hazardous Material or special wastes or by the federal government, any state or any political subdivision thereof, or any agency, court or body of the federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

(2) Railroad has received no notice that the current use of the Property violates any Environmental Law.

(3) To Railroad's actual knowledge, the Property has never been used as a landfill or a waste dump.

**B. Survival of Representations and Warranties.** Railroad agrees that the representations and warranties set forth in this Section V or elsewhere in this Agreement are true as of the Execution Date and will be true as of the Closing Date, except with respect to matters which have been disclosed in writing to and approved by the City. Railroad maintains the right

to update any and all of its representations and warranties, provided, however, that if the updated representations and warranties disclose information to the City which causes the City to decide that it no longer wishes to accept title to the Property from Railroad, the City may terminate this Agreement by delivering written notice of such decision to Railroad, and shall thereafter be under no further obligation to Railroad.

**C. Environmental Indemnification.** Railroad agrees to indemnify, defend and hold the City harmless from and against any claims, losses, liabilities and expenses (including reasonable attorneys' fees and court costs) relating to or arising from any breach of its representations or warranties under this Section V.

**(1) Notice and Determination of Claims.**

- (i) In the event that the City (the "**Indemnified Party**") is seeking indemnification hereunder, the City shall give Railroad (the "**Indemnitor**") a notice (a "**Claim Notice**") describing in reasonable detail the facts giving rise to any claim for indemnification hereunder and shall include in such Claim Notice (if then known) the amount or the method of computation of the amount of such claim, and a reference to the provision of this Agreement or any other agreement, document or instrument executed hereunder or in connection herewith upon which such claim is based; provided, that a Claim Notice in respect of any pending or threatened action at law or suit in equity by or against a third Person as to which indemnification will be sought (each such action or suit being a "**Third Person Claim**") shall be given promptly after the action or suit is commenced and governed under Section V.C.(2)
- (ii) After the giving of any Claim Notice pursuant hereto, the amount of indemnification to which an Indemnified Party shall be entitled under this Section V shall be paid promptly after receipt of the Claim Notice, unless the Indemnitor has given written notice to the Indemnified Party of an objection regarding the Claim Notice, in which case the claim for indemnification shall be resolved in accordance with (i) the written agreement between the Indemnified Party and the Indemnitor; (ii) a final judgment or decree of any court of competent jurisdiction (for purposes of this Section V.C.(1), the judgment or decree of a court shall be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken shall have been finally determined); or (iii) by any other means to which the Indemnified Party and the Indemnitor shall agree.

- (iii) In calculating any loss or expense incurred by an Indemnified Party, there shall be deducted any insurance recovery actually received in respect thereof (and no right of subrogation shall accrue hereunder to any insurer), provided that any such deduction shall be net of any retrospective or prospective premium adjustments and any out-of-pocket costs and expenses incurred in connection with such insurance recovery.

**D. Environmental Reports.** Not less than thirty (30) days after the Execution Date, Railroad agrees to deliver to the City copies of all existing soil, environmental, engineering or other reports or studies relating to the Property in the Railroad's possession.

## **SECTION VI. THE CITY'S RIGHT TO ENTER THE PROPERTY.**

Railroad shall permit the City and its authorized representatives, agents and contractors to enter onto the Property from time to time prior to the Closing Date, so long as any such entry does not disturb the use of the Property by Railroad or the Existing Customer during reasonable business hours and so long as such entry is accompanied by a representative, agent or employee of Railroad for the purpose of performing tests, environmental audits, engineering and marketing studies, surveys, and other inspections, studies and tests on the Property as the City shall reasonably deem necessary. The City shall require any party hired by the City to perform such inspections and tests prior to the Closing Date to maintain liability insurance in amounts and coverages reasonably acceptable to Railroad. The City agrees to defend, indemnify and hold Railroad harmless from any claim, loss, liability or expense (including reasonable attorneys' fees) in connection with any such pre-closing entry on the Property by the City, its representatives, agents, employee and independent contractors. The City shall promptly repair and restore the Property to the same condition as existed immediately prior to such entry if such entry resulted in any damage thereto.

## **SECTION VII. CASUALTY.**

Loss or damage to any improvements located on the Property by fire, casualty or act of God shall be at the sole risk of Railroad until the conveyance of the Property to the City. In the event of damage or casualty to all or any portion of the Property prior to the Closing, Railroad shall promptly send written notice thereof to the City. The City may, within thirty (30) days following receipt of such notice, elect to terminate this Agreement by sending written notice thereof to Railroad. If the City chooses to proceed with the transaction, there shall be no adjustment in the Purchase Price, but the scope of Railroad Improvement Work (as defined below) shall be adjusted as appropriate. Any insurance proceeds received from such damage or casualty shall be the sole property of Railroad.

## **SECTION VIII. REMEDIES.**

**A. Time for Performance.** No extension of time for the performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act or effective unless agreed to in writing. If any date for performance falls on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

**B. Breach.** In the event of a default by a party in the performance of its obligations under this Agreement, such party upon written notice from the other, shall immediately proceed to cure or remedy such default. In the event of a default that has not been cured within 30 days, the non-defaulting party may institute such proceedings at law or in equity as may be desirable in its sole discretion to remedy the default, including but not limited to, proceedings to compel specific performance. In the event of a default by the City that has not been cured within 30 days prior to the Closing, Railroad may terminate this Agreement by giving written notice thereof to the City, which termination shall be the Railroad's sole and exclusive remedy. Notwithstanding the foregoing, the City may not make a claim against the Railroad for any breach of representation or warranty or covenant if the project manager of the Department of Transportation responsible for the Cherry Avenue Bridge project had actual knowledge of such breach or such breach was otherwise disclosed in writing to the City and the City nonetheless elected to proceed with the Closing notwithstanding such breach.

**C. Waiver and Estoppel.** Any delay by either party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive said party of or limit such rights in any way. No waiver made by either party with respect to any specific default by the other party shall be construed, considered or treated as a waiver of the rights of said party with respect to any other defaults of the other party.

## **SECTION IX. CONFLICT OF INTEREST; CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE.**

No agent, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement; nor shall any such agent, official or employee participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested. No agent, official or employee of the City shall be personally liable to Railroad or any successor in interest in the event of any default or breach by the City.

## **SECTION X. PROVISIONS NOT MERGED WITH DEED.**

The provisions of this Agreement shall not be merged with the Deed, and the Deed shall not be deemed to affect or impair the provisions of this Agreement.



## **SECTION XI. HEADINGS.**

The headings of the various sections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions thereof.

## **SECTION XII GOVERNING LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

## **SECTION XIII ENTIRE AGREEMENT.**

This Agreement (and the Exhibits attached hereto, including specifically, but without limitation, the Easement Agreement) constitutes the entire agreement between the parties and supersedes and replaces any prior agreements between the parties with respect to the subject matter hereof. This Agreement shall not be modified or amended in any manner other than by supplemental written agreement executed by the parties.

## **SECTION XIV. SEVERABILITY.**

If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

## **SECTION XV. NOTICES.**

Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: a) personal service; b) electronic communications, whether by telex, telegram or telecopy, c) overnight courier; or d) registered or certified first class mail, postage prepaid, return receipt requested:

If to Railroad.                      Chicago Terminal Railroad Company  
   1800 S Clinton Street, Suite 400  
   Chicago, Illinois 60661  
   Attention: Mr. Edwin Ellis, President  
   Fax: \_\_\_\_\_

If to the City:                      Department of Transportation  
   30 North LaSalle Street, Room 400  
   Chicago, Illinois 60602  
   Attn: Dan Burke  
   Fax: (312) 742-5430

with a copy to: Corporation Counsel  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attn. Real Estate Division  
Fax: (312)742-0277

Any notice, demand or communication given pursuant to either clause a) or b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively. Any notice, demand or communication given pursuant to clause c) shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause d) shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

#### **SECTION XVI. COUNTERPARTS.**

This Agreement may be executed in counterparts, each of which shall constitute an original instrument.

#### **SECTION XVII. AMENDMENTS.**

This Agreement may only be amended by the parties in writing. Such amendment shall become effective upon its execution by the parties. The Commissioner of CDOT shall have discretion to amend this Agreement, except for amendments that would increase the cash purchase price, which amendments shall require the consent of City Council.

#### **SECTION XVIII. SUCCESSORS AND ASSIGNS.**

The terms of this Agreement shall be binding upon the City and Railroad, and their respective legal representatives, successors and assigns. Notwithstanding the foregoing, prior to the Closing, neither party may assign its rights hereunder without the prior written consent of the other party.

#### **SECTION XIX. RAILROAD IMPROVEMENT WORK.**

The City covenants that promptly after the Closing Date, it shall perform the improvement work described below (the "Railroad Improvement Work").

A. The City, at its sole expense, shall supply or cause to be supplied in accordance with a scope of work determined by the City, drawings and all other engineering, inspection, work, supplies, materials, labor, and equipment required to perform and complete certain improvements to the existing Railroad Improvements.

**B.** The City shall provide Railroad with ten (10) calendar days prior written notice of the commencement of the Railroad Improvements Work. Upon receipt of such notice, and at all times thereafter (and in no event, less than 24 hours prior to an occurrence), Railroad shall advise the City of the dates and times at which any rail traffic shall cross the Cherry Avenue Bridge so that the City may take all necessary precautions to coordinate such ongoing work with such traffic and to avoid injury to persons or property.

**C.** The Railroad acknowledges and agrees that prior to its execution of this Agreement, the City has prepared, and the Railroad has reviewed and approved, drawings for the Railroad Improvements Work

**D.** Except as required by law or court order, the Railroad shall maintain the confidentiality of and shall not disclose any of the City's drawings. Railroad will limit the number of employees, appointed officials and consultants that will have access to any of the City's drawings to those individuals that require access to the drawings in order to perform their responsibilities in connection with the Project.

**E.** After the contract (the "Project Contract") between the City and the City's construction contractor (the "City's Contractor") for the Railroad Improvement Work has been awarded and prior to the commencement of any work, a pre-construction meeting shall be held between the representatives of the City, Railroad, and the City's Contractor, at a time and place designated by the City's representative, for the purpose of coordinating the work to be performed by the parties, and at which time a schedule for the performance of such work shall be agreed to and adopted by the authorized representatives of the City and Railroad. If the City requests in writing that the Railroad perform a portion of the Railroad Improvement Work, the City shall reimburse the Railroad for any costs or expenses, including direct labor costs, which the Railroad may incur in performing such requested work.

**F.** All City-issued change orders relating to the Project Contract will be deemed incorporated into this Agreement by reference. No consent from the Railroad shall be required for such change orders unless they materially and change the scope of the Railroad Improvement Work in a manner that would adversely affect the Railroad's operation.

**G.** The City shall be responsible for the payment of the City Work. The source of funds for payment of the City Work is anticipated to be available tax incremental revenues but may include any other legally available funds as may be identified by the City. As of the Effective Date, at least \$1,200,000 is available for payments under this Agreement. The City hereby indemnifies and holds harmless Railroad, its parents and affiliates from and against any and all loss, cost, liability and expense any of them may suffer as a result of the City failing to fully pay for the Railroad Improvement Work or should the Railroad Improvement Work fail to conform to the requirements detailed in this Agreement or the Contract Plans for Cherry Avenue Bridge Over North Branch Canal Superstructure Rehabilitation dated March 2008 and prepared by CTE and CDOT. The City covenants to substantially complete the Railroad Improvement Work within twelve (12) months of the date of this Agreement.

Notwithstanding anything to the contrary in this Section XIX, the City shall not make any changes or improvements to the Property which will have a material adverse effect on Railroad's operation and safety of the Property.

## **SECTION XX. NO JOINT VENTURE.**

This Agreement is not intended to, and shall not be construed to, create or give rise to (a) any rights or obligations except as expressly stated herein, (b) any joint venture, partnership, corporate, employment, agency, construction manager, general contractor, subcontractor, or other relationship of any sort between the City and Railroad and/or any other person(s), and/or any third-party beneficiary rights of any nature whatsoever.

## **SECTION XXI. OTHER ACTS.**

The parties agree to perform such other acts, and to execute, acknowledge and deliver such other instruments, documents and materials as may be reasonably to consummate the transaction contemplated in this Agreement.

## **SECTION XXII. REQUIRED CITY PROVISIONS.**

The Railroad also agrees to be bound by the required City provisions set forth in Exhibit D attached hereto.

## **SECTION XXIII. RECIPROCAL INDEMNIFICATIONS.**

### **A. Indemnification Provisions For Benefit Of The Railroad.**

As additional consideration for the Railroad selling the Property to the City, the City hereby indemnifies and holds harmless Railroad, its parents, affiliates, and their owners, shareholders, members, managers, directors, officers, employees, attorneys, agents, representatives and advisors (the "**Railroad Indemnitees**") from and against any and all costs, expenses, losses, taxes, penalties, damages, claims, actions or other liabilities (including, but not limited to, reasonable attorney's fees and court costs) (collectively, "**Railroad Damages**") suffered or incurred by any of the Railroad Indemnitees in any way relating to, arising from or by reason of (a) loss or damage to any personal property of pedestrians, bicyclists or other non-vehicular users of the Railroad Improvements, or (b) death or injury to any such persons occurring on the Property, *unless, in the case of either (a) or (b), such loss, damage, death or injury is caused by the Railroad's Gross Negligence (as defined below) or willful misconduct.*

### **B. Indemnification Provisions For Benefit of The City.**

The Railroad hereby indemnifies and holds harmless the City and its elected officials, employees, attorneys, agents, representatives and advisors (the "City Indemnitees") from and against any and all costs, expenses, losses, taxes, penalties, damages, claims, actions or other liabilities (including, but not limited to, reasonable attorney's fees and court costs) (collectively, "City Damages") suffered or incurred by any of the City Indemnitees in any way relating to, arising from or by reason of (a) loss or damage to any personal property of pedestrians, bicyclists or other non-vehicular users or to the Railroad Improvements, or (b) death or injury to any such persons, occurring on the Property, *if*, in the case of either (a) or (b), such City Damages are caused by the Railroad's Gross Negligence or willful misconduct.

Each of the Railroad Indemnitees and City Indemnitees shall be deemed to be a third party beneficiary of this Agreement for the purposes of receiving the benefits of and enforcing this Section XXIII

As used in this Agreement, "Gross Negligence" shall mean an act or omission that is evidence of recklessness or carelessness toward or a disregard for the safety or well being of any person or personal property located on the Property resulting in injury to such person or personal property; provided, however, in no event shall Gross Negligence include Railroad's normal railroad operations that are in compliance with applicable federal law and regulations.

**C. Matters Involving Third Parties.**

(1) If any third party shall notify either party (the "Indemnified Party") with respect to any matter (a "Third Party Claim") which may give rise to a claim for indemnification against any other party (the "Indemnifying Party") under this Section XXIII or under Section V(C), then the Indemnified Party shall promptly notify each Indemnifying Party thereof in writing; *provided, however*, that no delay on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnifying Party from any obligation hereunder unless (and then solely to the extent) the Indemnifying Party thereby is prejudiced.

(2) Any Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party so long as (i) the Indemnifying Party notifies the Indemnified Party in writing within 15 days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will indemnify the Indemnified Party from and against the entirety of any adverse consequences the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim, (ii) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the Third Party Claim and fulfill its indemnification obligations hereunder, (iii) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief, (iv) settlement of, or an adverse judgment

with respect to, the Third Party Claim is not, in the good faith judgment of the Indemnified Party, likely to establish a precedential custom or practice materially adverse to the continuing business interests of the Indemnified Party, and (v) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently.

(3) So long as the Indemnifying Party is conducting the defense of the Third Party Claim in accordance with Section XXIII(C)(2) above, (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim, (ii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party (not to be withheld unreasonably), and (iii) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably).

(4) In the event any of the conditions in Section XXIII(C)(2) above is or becomes unsatisfied, however, (i) the Indemnified Party may defend against, and consent to the entry of any judgment or enter into any settlement with respect to, the Third Party Claim in any manner it reasonably may deem appropriate (and the Indemnified Party need not consult with, or obtain any consent from, any Indemnifying Party in connection therewith), (ii) the Indemnifying Parties will reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses), and (iii) the Indemnifying Parties will remain responsible for any adverse consequences the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim to the fullest extent provided in this Section XXIII.

[The remainder of this page is intentionally left blank. The parties' signatures appear on the following page.]

**[Signature Page For Real Estate Sales Agreement]**

**IN WITNESS WHEREOF**, the parties hereto have executed or caused this Agreement to be executed as of the date first above written.

**CITY OF CHICAGO**, an Illinois municipal corporation  
and home rule unit of government, acting by and through  
its Department of Transportation

BY: \_\_\_\_\_  
Thomas Byrne, Commissioner

**CHICAGO TERMINAL RAILROAD COMPANY**, an  
Illinois corporation

BY: \_\_\_\_\_

This instrument was prepared by.

Deputy Corporation Counsel  
Real Estate Division  
Room 600  
121 North LaSalle Street  
Chicago, Illinois 60602  
(312) 744-6934

**EXHIBIT A**  
**PRELIMINARY LEGAL DESCRIPTION OF CHERRY AVENUE BRIDGE**  
**[SEE ATTACHED]**



**EXHIBIT B**  
**DEPICTION OF CHERRY AVENUE BRIDGE**  
**[SEE ATTACHMENT]**

**EXHIBIT C**  
**RAIL LINE EASEMENT AGREEMENT**  
**[SEE ATTACHMENT]**

## **EXHIBIT D**

### **REQUIRED CITY PROVISIONS**

**E-1 Business Relationships.** Tenant acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (C) notwithstanding anything to the contrary contained in this Agreement, that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. Tenant hereby represents and warrants that no violation of Section 2-156-030 (b) has occurred with respect to this Lease Agreement or the transactions contemplated hereby.

**E-2 Patriot Act Certification.** Tenant represents and warrants that neither Tenant nor any Affiliate thereof (as defined in the next paragraph) is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment, the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

As used in the above paragraph, an "Affiliate" shall be deemed to be a person or entity related to Tenant that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Tenant, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

**E-3 Prohibition on Certain Contributions-Mayoral Executive Order No. 05-1** Tenant agrees that Tenant, any person or entity who directly or indirectly has an ownership or beneficial interest in Tenant of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Tenant's contractors (i.e., any person or entity in direct contractual privity with Tenant regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Tenant and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his

political fundraising committee (i) after execution of this Agreement by Tenant, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Tenant and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

Tenant represents and warrants that from the date the City approached the Tenant or the date Tenant approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Tenant agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Tenant agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1.

Tenant agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 05-1 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including, without limitation, termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Tenant intentionally violates this provision or Mayoral Executive Order No. 05-1 prior to the closing of this Agreement, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

"Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fundraising committee.

"Other Contract" means any other agreement with the City of Chicago to which Tenant is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council of the City of Chicago.

**“Contribution” means a “political contribution” as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.**

**Individuals are “Domestic Partners” if they satisfy the following criteria:**

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and**
- (B) neither party is married; and**
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois, and**
- (D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and**
- (E) two of the following four conditions exist for the partners:**
  - 1. The partners have been residing together for at least 12 months.**
  - 2. The partners have common or joint ownership of a residence.**
  - 3. The partners have at least two of the following arrangements**
    - a. joint ownership of a motor vehicle;**
    - b. a joint credit account;**
    - c. a joint checking account;**
    - d. a lease for a residence identifying both domestic partners as tenants.**
  - 4. Each partner identifies the other partner as a primary beneficiary in a will**

**“Political fundraising committee” means a “political fundraising committee” as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.**

**E-4 Waste Ordinance Provisions.** In accordance with Section 11-4-1600(c) of the Municipal Code of Chicago, Tenant warrants and represents that it, and to the best of its knowledge, its contractors and subcontractors, have not violated and are not in violation of any provisions of Section 7-28 or Section 11-4 of the Municipal Code (the “Waste Sections”). During the period while this Agreement is executory, Tenant’s, any general contractor’s or any subcontractor’s violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit Tenant’s, general contractor’s and its subcontractors’ duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement, and may further affect the Tenant’s eligibility for future contract awards.

**E-5 Cooperation With Office of Compliance.** In accordance with Chapter 2-26-110 et seq. of the Municipal Code, the Tenant acknowledges that every officer, employee, department and agency of the City shall be obligated to cooperate with the Executive Director of the Office of Compliance in connection with any activities undertaken by such office with respect to this Lease, including, without limitation, making available to the Executive Director the department's premises, equipment, personnel, books, records and papers. The Tenant agrees to abide by the provisions of Chapter 2-26-110 et seq .

## **EXHIBIT C**

This Instrument Prepared  
By and After Recording  
Return to:

Steve Holler  
Deputy Corp. Counsel  
Real Estate Division  
Department of Law  
City of Chicago  
121 N. LaSalle Street, Room 600  
Chicago, Illinois 60602

### **RAIL LINE EASEMENT AGREEMENT**

This Rail Line Easement Agreement ("Easement Agreement") is entered into by and between CITY OF CHICAGO, a municipal corporation and a home rule government, as grantor, having its principal office at 121 North LaSalle Street, Chicago, Illinois 60602 (the "City"), and IOWA PACIFIC HOLDINGS, LLC, an Illinois limited liability company, and CHICAGO TERMINAL RAILROAD CORPORATION, as grantees, having a common address of \_\_\_\_\_, (collectively, "Railroad")

### **RECITALS**

A. Railroad was previously the owner of that certain parcel of real estate and associated air rights described on Exhibit A attached hereto and depicted on Exhibit B attached hereto (together with all rights, interests, privileges and appurtenances thereto, the "Real Property")

B. The Real Property is improved with a steel bridge traversing the North Branch Canal of the North Branch of the Chicago River that includes a single track rail line, certain walkways on both sides of the rail line and ancillary bridge infrastructure (such improvements, but expressly excluding the actual track, ties, ballast, and other track materials, signals and switches, if any, and excluding any rolling stock or communications equipment or facilities, if any, the "Railroad Improvements"). The Railroad Improvements, together with the Real Property, and excluding any tangible and intangible property related thereto and owned by Railroad, is sometimes referred to herein as the "Property."

C. The steel bridge, commonly known as the Cherry Avenue Bridge, connects Goose Island with the mainland at a point just south of West North Avenue, in Chicago, Illinois

D. Pursuant to that certain Real Estate Sales Agreement between the City and the Railroad of even date herewith (the "Sales Agreement"), simultaneous with the execution, delivery and recording of this Easement Agreement, the City has purchased the Property from



the Railroad for the purpose of making certain improvements to the bridge that will facilitate bicycle and pedestrian access over the bridge onto Goose Island so as to establish a new means of access for the general public to and from Goose Island and to the businesses and employers located there.

E Under the Sales Agreement, as part of the consideration for such sale under the Sales Agreement, the City has agreed to grant the Railroad the easement rights set forth herein, *subject to the terms hereof, for the express purpose of enabling the Seller to continue to conduct its rail operations*

**NOW, THEREFORE,** in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**SECTION 1. INCORPORATION OF RECITALS AND EXHIBITS.** The recitals set forth above and the exhibits attached hereto constitute an integral part of this Easement Agreement and are incorporated herein by this reference as the agreements of the parties.

**SECTION 2 GRANT OF EASEMENT** The City, as grantor, hereby grants the Railroad, as grantee, its successors and assigns, an irrevocable, exclusive easement for the Railroad's continued use of the Property for the purpose of enabling the Railroad to provide rail service for itself and to any customers that the Railroad may hereafter serve (the "Railroad Customer(s)"). Such easement shall be over the existing rail line and any replacement line thereto, provided that any such replacement line shall be located in substantially the same location as the existing line. If at any time after the date hereof, the use of the rail line ceases and, for a period of one year from such termination date, the Railroad does not make active use of the rail line to provide regular rail service to one or more Railroad Customers, such easement shall terminate upon authorization from the Surface Transportation Board under 49 U.S.C. 10903. Moreover, Railroad may not discontinue rail service or abandon its track absent authorization from the Surface Transportation Board under 49 U.S.C. 10903. Nothing contained in this paragraph shall be deemed to prohibit the Railroad from assigning its rights herein or granting trackage rights on the Property to other users or customers.

**SECTION 3. AUTHORITY TO GRANT EASEMENT.** The City represents and warrants that the execution of this Easement Agreement by the City and grant of the easement provided for hereunder have been authorized by an ordinance adopted by the City Council of the City of Chicago on May \_\_, 2008

**SECTION 4. AUTHORITY TO ACCEPT EASEMENT GRANT.** Each of Railroad parties represents and warrants that it has full power and authority to acceptance the easement interest granted hereby and to perform the Railroad's obligations hereunder.

**SECTION 5 MAINTENANCE RESPONSIBILITIES.** In addition to performing the initial Railroad Improvements Work (as defined in the Sales Agreement), the City shall have thereafter have the obligation to maintain, repair and replace, at the City's expense, the Railroad Improvements in a manner that enables the Railroad to operate in its normal and customary manner and in compliance with applicable federal regulations. This preceding sentence shall not be construed to (a) obligate the City to maintain the actual track, ties, ballast, and other track materials, signals and switches, if any, or (b) apart from the required initial rehabilitation work,

and subject to the City's maintenance, repair and replacement obligation, make other additional capital expenditures to enlarge, redesign, or upgrade the Railroad Improvements to satisfy any such federal requirements.

## **SECTION 6. RECIPROCAL INDEMNIFICATIONS**

### **A. Indemnification Provisions For Benefit Of The Railroad.**

As additional consideration for the Railroad selling the Property to the City, the City hereby indemnifies and holds harmless Railroad, its parents, affiliates, and their owners, shareholders, members, managers, directors, officers, employees, attorneys, agents, representatives and advisors (the "**Railroad Indemnitees**") from and against any and all costs, expenses, losses, taxes, penalties, damages, claims, actions or other liabilities (including, but not limited to, reasonable attorney's fees and court costs) (collectively, "**Railroad Damages**") suffered or incurred by any of the Railroad Indemnitees in any way relating to, arising from or by reason of (a) loss or damage to any personal property of pedestrians, bicyclists or other non-vehicular users of the Railroad Improvements, or (b) death or injury to any such persons occurring on the Property, *unless*, in the case of either (a) or (b), such loss, damage, death or injury is caused by the Railroad's Gross Negligence (as defined below) or willful misconduct.

### **B. Indemnification Provisions For Benefit of The City.**

The Railroad hereby indemnifies and holds harmless the City and its elected officials, employees, attorneys, agents, representatives and advisors (the "**City Indemnitees**") from and against any and all costs, expenses, losses, taxes, penalties, damages, claims, actions or other liabilities (including, but not limited to, reasonable attorney's fees and court costs) (collectively, "**City Damages**") suffered or incurred by any of the City Indemnitees in any way relating to, arising from or by reason of (a) loss or damage to any personal property of pedestrians, bicyclists or other non-vehicular users or to the Railroad Improvements, or (b) death or injury to any such persons, occurring on the Property, *if*, in the case of either (a) or (b), such City Damages are caused by the Railroad's Gross Negligence or willful misconduct.

Each of the Railroad Indemnitees and City Indemnitees shall be deemed to be a third party beneficiary of this Agreement for the purposes of receiving the benefits of and enforcing this Section 6

As used in this Agreement, "**Gross Negligence**" shall mean an act or omission that is evidence of recklessness or carelessness toward or a disregard for the safety or well being of any person or personal property located on the Property resulting in injury to such person or personal property; *provided, however, in no event shall Gross Negligence include Railroad's normal railroad operations that are in compliance with applicable federal law and regulations*

### **C. Matters Involving Third Parties.**

(1) If any third party shall notify either party (the "**Indemnified Party**") with respect to any matter (a "**Third Party Claim**") which may give rise to a claim for indemnification against any other party (the "**Indemnifying Party**") under this Section 6, then the Indemnified Party shall promptly notify each Indemnifying Party thereof in

writing; *provided, however*, that no delay on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnifying Party from any obligation hereunder unless (and then solely to the extent) the Indemnifying Party thereby is prejudiced

(2) Any Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party so long as (i) the Indemnifying Party notifies the Indemnified Party in writing within 15 days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will indemnify the Indemnified Party from and against the entirety of any adverse consequences the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim, (ii) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the Third Party Claim and fulfill its indemnification obligations hereunder, (iii) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief, (iv) settlement of, or an adverse judgment with respect to, the Third Party Claim is not, in the good faith judgment of the Indemnified Party, likely to establish a precedential custom or practice materially adverse to the continuing business interests of the Indemnified Party, and (v) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently.

(3) So long as the Indemnifying Party is conducting the defense of the Third Party Claim in accordance with Section 6(C)(2) above, (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim, (ii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party (not to be withheld unreasonably), and (iii) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably)

(4) In the event any of the conditions in Section 6(C)(2) above is or becomes unsatisfied, however, (i) the Indemnified Party may defend against, and consent to the entry of any judgment or enter into any settlement with respect to, the Third Party Claim in any manner it reasonably may deem appropriate (and the Indemnified Party need not consult with, or obtain any consent from, any Indemnifying Party in connection therewith), (ii) the Indemnifying Parties will reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses), and (iii) the Indemnifying Parties will remain responsible for any adverse consequences the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim to the fullest extent provided in this Section 6

**SECTION 7 INSURANCE.** The Railroad shall procure and maintain at the Railroad's sole expense during the entire term of this Easement Agreement, the types and amounts of insurance set forth below with insurance companies authorized to do business in the State of Illinois, covering all Railroad uses authorized under this Easement Agreement

A. Commercial General Liability Insurance (Primary and Umbrella). Commercial General Liability Insurance, or equivalent, with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage shall include, at a minimum, all premises and operations, products/completed operations, independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement) The City of Chicago shall be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the Work. Such coverage shall include an endorsement specifically insuring any liability arising from railroad operations

B. Automobile Liability Insurance (Primary and Umbrella) When any motor vehicles (owned, non-owned and hired) are used in connection with any work performed by the Railroad, the Railroad and its contractors and subcontractors shall procure and maintain Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City of Chicago shall be named as an additional insured with respect to such coverage on a primary, non-contributory basis

C. Other Insurance. Such other insurance coverage in such amounts as may be reasonably required by the City's Department of Finance, Division of Risk Management, and as may be applicable to the Railroad's use of the Property and performance of any of its maintenance obligations hereunder.

**SECTION 8. ENTIRE AGREEMENT.** This Easement Agreement constitutes the entire agreement between the parties as to the easement granted herein. This Easement Agreement may not be modified or amended in any manner other than by supplemental written agreement executed by the parties. In the event the City determines that the legal description for the Property attached hereto as Exhibit A is not contiguous with existing North Cherry Avenue right of way owned by the City, or is otherwise defective, the parties agree to cooperate in amending this Easement Agreement to correct such deficiencies or scrivener's errors or to more particularly depict the existing rail line location within the Real Property.

**SECTION 9. SEVERABILITY** If any provision of this Easement Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof is held invalid, the remainder of this Easement Agreement shall be construed as if such invalid part were never included and this Easement Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

**SECTION 10. NOTICES.** Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy, provided that there is written confirmation of such communications; (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested:

If to the City:

City of Chicago  
Department of Transportation  
30 North LaSalle Street  
11<sup>th</sup> Floor  
Chicago, Illinois 60602

**Attn: Commissioner**

**With a copy to:**

**City of Chicago  
Department of Law  
121 North LaSalle Street  
Room 600-City Hall  
Chicago, Illinois 60602  
Attn: Real Estate Division**

**If to the Railroad:**

**[INSERT NOTICE ADDRESS]**

**With a copy to:**

**[INSERT NOTICE ADDRESS]**

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively, provided that such electronic dispatch is confirmed as having occurred prior to 5:00 p.m. on a business day. If such dispatch occurred after 5:00p.m on a business day or on a non-business day, it shall be deemed to have been given on the next business day. Any notice, demand or communication given pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received three business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

**SECTION 11. SUCCESSORS AND ASSIGNS** The terms of this Easement Agreement, the terms and conditions of this Agreement shall apply to and bind the successors and assigns of the parties and the easement granted hereunder shall run with the Property

**[THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK. THE PARTIES' SIGNATURES  
APPEAR ON NEXT PAGE]**

**[Signature Page for Rail Line Easement Agreement]**

**IN WITNESS WHEREOF**, the parties have caused this Easement Agreement to be executed on or as of the date first above written.

**CITY OF CHICAGO**, a municipal corporation  
and home rule unit of government

By: \_\_\_\_\_  
RICHARD M. DALEY, Mayor

**ATTEST**

\_\_\_\_\_  
Miguel del Valle, City Clerk

STATE OF ILLINOIS )  
COUNTY OF COOK        )       SS

I, the undersigned, a Notary Public in and for Cook County, Illinois, do hereby certify that Miguel del Valle, City Clerk, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day and acknowledged that by his signature, as City Clerk of the City of Chicago he attested to the signature, seal and delivery of said instrument as his free and voluntary act, and as the free and voluntary act of the City of Chicago, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
NOTARY PUBLIC

**[ADDITIONAL SIGNATURES APPEAR ON NEXT PAGE]**

**CITY OF CHICAGO**, a municipal corporation,  
acting by and through its Department of  
Transportation

By \_\_\_\_\_  
Thomas Byrne  
Commissioner

**IOWA PACIFIC HOLDINGS, L.L.C.**,  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**CHICAGO TERMINAL RAILROAD  
COMPANY**, an Illinois corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that as managing member of Iowa Pacific Holdings, L.L.C. (the "LLC"), he signed and delivered the instrument pursuant to authority given by the City as his free and voluntary act and as the free and voluntary act and deed of the LLC, for the uses and purposes therein set forth.

GIVEN under my notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008

—

\_\_\_\_\_  
NOTARY PUBLIC



STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that as President of Chicago Terminal Railroad Company (the "Company"), he signed and delivered the instrument pursuant to authority given by the City as his free and voluntary act and as the free and voluntary act and deed of the Company, for the uses and purposes therein set forth

GIVEN under my notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008

-

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF ILLINOIS )  
COUNTY OF COOK ) SS  
 )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Thomas Byrne, personally known to me to be the Commissioner of Transportation ("Commissioner") of the City of Chicago, an Illinois municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that as the Commissioner, he signed and delivered the instrument pursuant to authority given by the by the City of Chicago, as his free and voluntary act and deed of the corporation, for the uses and purposes therein set forth

GIVEN under my notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT A**  
**LEGAL DESCRIPTION OF REAL PROPERTY**  
**[TO BE ATTACHED]**

**EXHIBIT B**  
**DEPICTION OF PROPERTY**  
**[TO BE ATTACHED]**

## **EXHIBIT D**

**OPERATING AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF CHICAGO**

**AND**

**CHICAGO TERMINAL RAILROAD COMPANY**

Prepared By:

John D. Heffner  
John D. Heffner, PLLC  
1750 K Street, N.W.  
Suite 350  
Washington, D.C. 20006  
(202) 296-3334

And

James H. M. Savage  
1750 K Street, N.W.  
Suite 350  
Washington, D.C. 20006  
(202) 296-3335

Dated: June \_\_, 2008

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## **OPERATING AGREEMENT**

This agreement is made and entered into this \_\_\_\_ day of June, 2008, by and between the City of Chicago, an Illinois municipal corporation, acting by and through its Department of Transportation, having its principal offices at 30 North LaSalle Street, Chicago, Illinois 60602 (the "City"), and the Chicago Terminal Railroad Company, a railroad corporation organized and existing under the laws of the State of Illinois, having a principal place of business at 118 South Clinton Street, Suite 400, Chicago, Illinois 60661 (the "Railroad").

### **WITNESSETH**

WHEREAS the City intends to acquire ownership of a certain parcel of real estate and associated air rights described on Exhibit A attached hereto and depicted on Exhibit B attached hereto (together with all rights, interests, privileges and appurtenances thereto, the "Real Property"); and

WHEREAS the Real Property is improved with a steel bridge traversing the North Branch Canal of the North Branch of the Chicago River that includes a single track rail line, certain walkways on both sides of the rail line and ancillary bridge infrastructure (such improvements, otherwise known as the Cherry Avenue Bridge, the "Bridge"), but expressly excluding the actual track, ties, ballast, and other track materials, signals, and switches, if any, and excluding any rolling stock or communications equipment or facilities, if any, and together with the Real Property and excluding any tangible or intangible property related thereto and owned by the Railroad; and

WHEREAS the Railroad intends to provide rail freight service over the rail line traversing the Bridge (the "Rail Line"); and

WHEREAS the Parties desire and agree to enter into a Real Estate Sales Agreement, the terms of which are incorporated herein and made a part hereof; and

WHEREAS the Parties further desire and agree to enter into a Rail Line Easement Agreement, the terms of which are likewise incorporated herein and made a part hereof; and

WHEREAS the Parties further desire and agree to enter into an Operating Agreement, which is this instrument; and

WHEREAS the City has inspected the Real Property being



conveyed, and the City is knowledgeable of the present condition of said Real Property; and

WHEREAS the City, for its part, agrees to perform the Railroad Improvement Work set forth in Section XIX of the Real Estate Sales Agreement as well as to perform only those Maintenance Responsibilities set forth in the Rail Line Easement Agreement and this Operating Agreement; and

WHEREAS the Railroad has inspected the Rail Line and is knowledgeable of the Rail Line's present condition; and

WHEREAS the Railroad, for its part, agrees to maintain the track, ties, ballast and other track materials, signals, and switches, if any, as set forth in the Rail Line Easement Agreement and this Operating Agreement; and

NOW THEREFORE, in consideration of the promises and the mutual covenants contained herein, the Parties hereto covenant and agree as follows:

#### SECTION 1 - DEFINITIONS

As used in this Agreement and also, unless otherwise more particularly defined, in other instruments referred to herein:

- (a) "Bridge" means the steel structure spanning the North Canal of the North Branch of the Chicago River that includes a single track rail line, certain walkways on both sides of the rail line, and arcillary bridge infrastructure connecting Goose Island and the mainland at a point due south of West North Avenue, in Chicago, Illinois, more particularly known as the North Cherry Avenue Bridge, but excluding the Railroad- Maintained Improvements, as defined herein.
- (b) "City" means the City of Chicago, its elected and appointed officials, and all departments thereof, including its Department of Transportation.
- (c) "Common Carrier" means a carrier holding itself out to the public as ready to engage in the transportation of goods for hire.
- (d) "Common Carrier Obligations" mean the common law duties described in the ICC Termination Act of 1995, Pub. L. 104-88, Dec. 29, 1995, 109 Stat. 803, 49 U.S.C. 10101 et seq.

- (e) "Easement Agreement" means the Rail Line Easement Agreement dated \_\_\_\_\_, 2008 between the Parties, granting the Railroad certain rights, interests, and privileges, as more particularly set forth therein.
- (f) "Operating Agreement" means this instrument establishing the Parties operating rights, maintenance responsibilities, and financial arrangements for rail operations over the Bridge.
- (g) "Parent Corporation" means Iowa Pacific Holdings, LLC, its subsidiaries, successors, and assigns, if any.
- (h) "Parties" mean the signatories to this agreement, their officers, directors, agents, servants, employees, and representatives.
- (i) "Real Estate Sales Agreement" means the Real Estate Sales Agreement dated \_\_\_\_\_, 2008 between the Parties, conveying the Railroad's rights, title and interest in the Bridge to the City, as more particularly set forth therein.
- (j) "Railroad" means the Chicago Terminal Railroad Company, its parent corporation as defined herein, its successors, and assigns, if any.
- (k) "Railroad Improvements" shall have the meaning ascribed to it in the Real Estate Sales Agreement.
- (l) "Railroad-Maintained Improvements" mean track, ties, ballast, other track materials, signals, and switches, if any.

## SECTION 2 - LICENSE AND TERM

(a) License - The City hereby grants Railroad an exclusive right and license to use the Bridge for the purpose of providing freight rail service and for all other purposes necessary to the foregoing purpose, subject, however, to the terms and conditions of the Rail Line Easement Agreement dated \_\_\_\_\_, 2008.

(b) Term - The aforesaid right and license commences as of the date this Operating Agreement is executed, is irrevocable except by operation of law, and continues in perpetuity, subject, however, to the terms and conditions of the Rail Line Easement Agreement dated \_\_\_\_\_, 2008.

(c) Termination of Rail Service - Termination of this Operating Agreement shall not result in discontinuance or abandonment of the Railroad's common carrier obligation and service. Railroad service may only be terminated in accordance with the provisions of 49 U.S.C. 10903, whether initiated by the Railroad or a third-party.

### SECTION 3 - COMMON CARRIER OBLIGATION

(a) Subsequent to and notwithstanding the Railroad's transfer to the City by the Real Estate Sales Agreement of all rights, title and interest in the Bridge, the Railroad agrees to retain, and shall retain, its full and exclusive common carrier obligation to provide rail service over the rail line traversing the Bridge.

(b) Nothing in this Operating Agreement or in any of the other instruments referenced herein shall be deemed to create or impose upon the City any common carrier obligation, as the City will not conduct freight operations or hold itself out to the public as willing or able to do so, said common carrier obligation at all times and in all respects remaining with the Railroad and its successors and assigns, if any.

### SECTION 4 - RAILROAD RIGHTS AND OBLIGATIONS

(a) Intent to Operate - The Railroad represents that it intends to operate a line of railroad over the Bridge, and further represents that it intends to market and thereafter provide revenue rail freight service to current and future shippers and receivers connected to or on the railroad line. This rail freight service will include providing motive power, cars, switching, line haul, and interchange with Class I railroads and other related services, including bridge traffic.

(b) Assignment of Operating Rights - The Operating Rights granted under this Operating Agreement may be assigned by the Railroad to third parties.

(c) Trackage Rights - The Railroad has the sole discretion to grant overhead or local trackage rights to third parties for use of the Rail Line.

(d) Interchange Rights - The Railroad may enter into interchange agreements with third parties involving the Rail Line.

(e) Maintenance - The Railroad shall have the obligation to maintain, repair and replace, at the Railroad's expense, Railroad-Maintained Improvements.

(f) Capital Improvements to Rail Line - The Railroad shall be solely responsible for the cost and expense of making capital improvements to the Rail Line, including expenditures to redesign or upgrade the Railroad-Maintained Improvements to satisfy any federal requirements enacted after the date hereof, so long as such redesign or upgrade does not materially interfere with the bicycle and pedestrian access over the Bridge to and from Goose Island.

(g) Equipment - The Railroad shall provide and maintain at its sole cost and expense all suitable locomotives, rail cars and other rail equipment as are necessary in the operation of this freight rail service. The Railroad shall be solely responsible for providing all tools, supplies, materials and other equipment necessary to maintain the Railroad-Maintained Improvements and its rail operations.

(h) Employees -

(1) The Railroad shall provide at its own expense the necessary personnel for operation over the rail line. Under no circumstances shall any railroad employee or personnel otherwise under the control of the Railroad be deemed agents, servants, sub-servants, borrowed servants, employees, sub-contractors of the City.

(2) The Railroad shall provide at its own expense, and be solely responsible for providing safety training and operations training to its agents, servants, employees, sub-contractors, licensees and invitees.

(i) Security - The Railroad shall be solely responsible for securing the Bridge and Rail Line from and against acts of sabotage, trespass, and vandalism and for preserving public order on the subject property. The Railroad shall have the right to post signs, to erect security fencing and to install security devices to protect the subject property from and against saboteurs, vandals and trespassers.

(j) Vegetation and Pest Control - The Railroad shall be solely responsible for eradicating, controlling and removing vegetation and pests from the Railroad's right-of way as may be required under applicable laws.

(k) Non-Interference Covenant - The Railroad shall not interfere in the City's maintenance and repair of the Bridge, or with the City's right to make improvements to the Bridge or Railroad Improvements.

(l) Inspections -

(1) The Railroad agrees to provide the City with reasonable access for any governmental or insurance inspection of the Bridge, to permit representatives of the other Party to be present for any governmental or insurance inspection, and to provide the other Party with access to any documents and reports relating to any governmental or insurance inspection.

(2) The Railroad shall permit inspection of the Property by representatives of the City upon reasonable notice during normal business hours, provided that said inspections not interfere with railroad operations, and further provided that said inspections not create significant risk of serious bodily injury from exposure of the inspector(s) to railroad operations.

(m) Additions or Extensions - Additions or extensions to the Rail Line shall be constructed at the sole cost and expense of the Railroad, provided, however, that no such additions or extension shall materially interfere with the bicycle and pedestrian access over the Bridge to and from Goose Island.

## SECTION 5 - THE CITY'S RIGHTS AND OBLIGATIONS

(a) Authority to Operate - The City represents that it has made, or will shortly make application to the Surface Transportation Board for the requisite operating authority under 49 CFR 1150.31, or in the alternative, for an exemption from the requirements of said Regulation, or in the alternative, for a declaration by the Board that no such authority or exemption is necessary.

(b) Non-Interference Covenant - The City shall not interfere in the Railroad's service, schedules, rates, frequency of operation, and maintenance and repair activities; nor with the Railroad's right to make improvements to the railroad right-of-way. The City shall coordinate its use, maintenance and inspection of the Bridge with the Railroad.

(c) Inspections - The City agrees to provide the Railroad

with reasonable notice of the date and time for any governmental or insurance inspection of the Bridge or of the Rail Line traversing the Bridge, to permit representatives of the other Party to be present for any governmental or insurance inspection, and to provide the other Party with access to any documents and reports relating to any governmental or insurance inspection. The City's inspections shall not interfere with Railroad operations.

(d) Maintenance - The City shall have the obligation to maintain, repair and replace, at the City's expense, the Railroad Improvements (but not the Railroad-Maintained Improvements) in a manner that enables the Railroad to operate in its normal and customary manner and in compliance with applicable federal regulations.

#### SECTION 6 - RECIPROCAL INDEMNIFICATIONS

The Parties hereby incorporate the provisions of Section 6 of the Rail Line Easement Agreement as though set forth in full herein.

#### SECTION 7 - INSURANCE

The Parties hereby incorporate the provisions of Section 7 of the Rail Line Easement Agreement as though set forth in full herein.

#### SECTION 8 - ENTIRE AGREEMENT

This Operating Agreement, the Real Estate Sales Agreement, and the Rail Line Easement Agreement constitute the entire agreement between the Parties as to the operating rights granted herein.

#### SECTION 9 - SEVERABILITY

If any provision of this Operating Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid, the remainder of this Operating Agreement shall be construed as if such invalid part were never included herein and the remaining provisions of this Operating Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

#### SECTION 10 - NOTICES

Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set

forth below by any of the following means: a) personal service; b) electronic communications, whether by telex, telegram or telecopy; c) overnight courier; or d) registered or certified First-Class mail, postage prepaid, return receipt requested:

If to Railroad: Chicago Terminal Railroad Company  
118 South Clinton St., Suite 400  
Chicago, IL 60661  
Attention: Mr. Edwin Ellis, President  
Fax: (312)466-9589

With a copy to: Lowis & Gellen LLP  
200 West Adams St., Suite 1900  
Chicago, IL 60606  
Attention: Gerald Haberkorn, Esq.  
Fax: (312)364-1003

If to the City: City of Chicago  
Department of Transportation  
30 North LaSalle St., Room 400  
Chicago, IL 60602  
Attention: Dan Burke  
Fax: (312)742-5430

With a copy to: City of Chicago  
Corporation Counsel  
121 North LaSalle St., Room 600  
Chicago, IL 60602  
Attention: Real Estate Division  
Fax: (312)742-0277

Any notice, demand or communication given pursuant to either clause a) or b) hereof shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause d) shall be deemed received three (3) business days after mailing. The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands, or communications shall be given.

#### SECTION 11 - SUCCESSORS AND ASSIGNS

The terms and conditions of this Operating Agreement shall apply to bind the successors and assigns of the Parties.

#### SECTION 12 - TAXES, ASSESSMENTS AND FEES

The Railroad shall not be liable for property taxes,

assessments, or fees relating to the Bridge or relating to the Real Property conveyed to the City by the Real Estate Sales Agreement.

#### SECTION 13 - FORCE MAJEURE

The Parties hereto will be excused from performance of any of their respective obligations hereunder, for the duration of any interruption occasioned by any event beyond their respective control (not due to their own fault, actions or inaction), which shall include without limitation, except the unavailability of insurance coverage in full accordance with Section 7.0 of this Operating Agreement or any amendment thereto: Acts of Nature; strikes or other labor actions; other causes beyond the reasonable control of the parties; service interruptions caused by fire, explosion, vandalism, malicious mischief, acts of terrorism, or sabotage; or unavoidable interruption of service caused by a connecting railroad.

#### SECTION 14 - CAPTIONS

The Captions used in this Operating Agreement are used for convenience and identification purposes only and do not form a part of this Operating Agreement.

#### SECTION 15 - AMENDMENTS OR MODIFICATIONS

This Operating Agreement may not be modified or amended in any manner other than by supplemental written instrument executed by the Parties.

#### SECTION 16 - NO JOINT VENTURE

This Operating Agreement is not intended to, and shall not be construed so as to create or give rise to (a) any rights or obligations except as expressly stated herein, (b) any joint venture, partnership, corporate, agency, construction manager, general contractor, subcontractor or other relationship of any sort between the City and Railroad and/or any other person(s), and/or any third-party beneficiary rights of any nature whatsoever.

#### SECTION 17 - COMPLIANCE WITH APPLICABLE LAWS

The Railroad agrees to conduct its operations at all times in compliance with all requirements of all applicable Federal laws, statutes, standards and regulations, as well as with state and local laws, statutes, standards and regulations not pre-



empted by Federal law, if any.

SECTION 18 - ENVIRONMENTAL MATTERS

The Parties hereby incorporate the provisions of Section V of the Real Estate Sales Agreement as though set forth in full herein.

SECTION 19 - CHOICE OF LAW

The Parties agree that this Operating Agreement shall be governed and construed in accordance with Federal law, and to the extent not pre-empted by or inconsistent therewith, by the laws of the State of Illinois.

IN WITNESS WHEREOF, the City of Chicago, by its Department of Transportation, has caused this Agreement to be signed by \_\_\_\_\_, this \_\_\_\_\_ day of June, 2008.

WITNESS:

THE CITY OF CHICAGO

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the Chicago Terminal Railroad Company, by its Board of Directors, has caused this Agreement to be signed by Edwin Ellis, its President, this \_\_\_\_\_ day of June, 2008.

WITNESS:

CHICAGO TERMINAL RAILROAD COMPANY

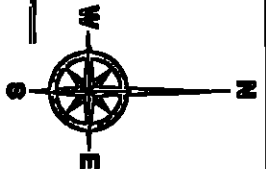
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\_\_\_\_\_  
Edwin Ellis, President  
\_\_\_\_\_

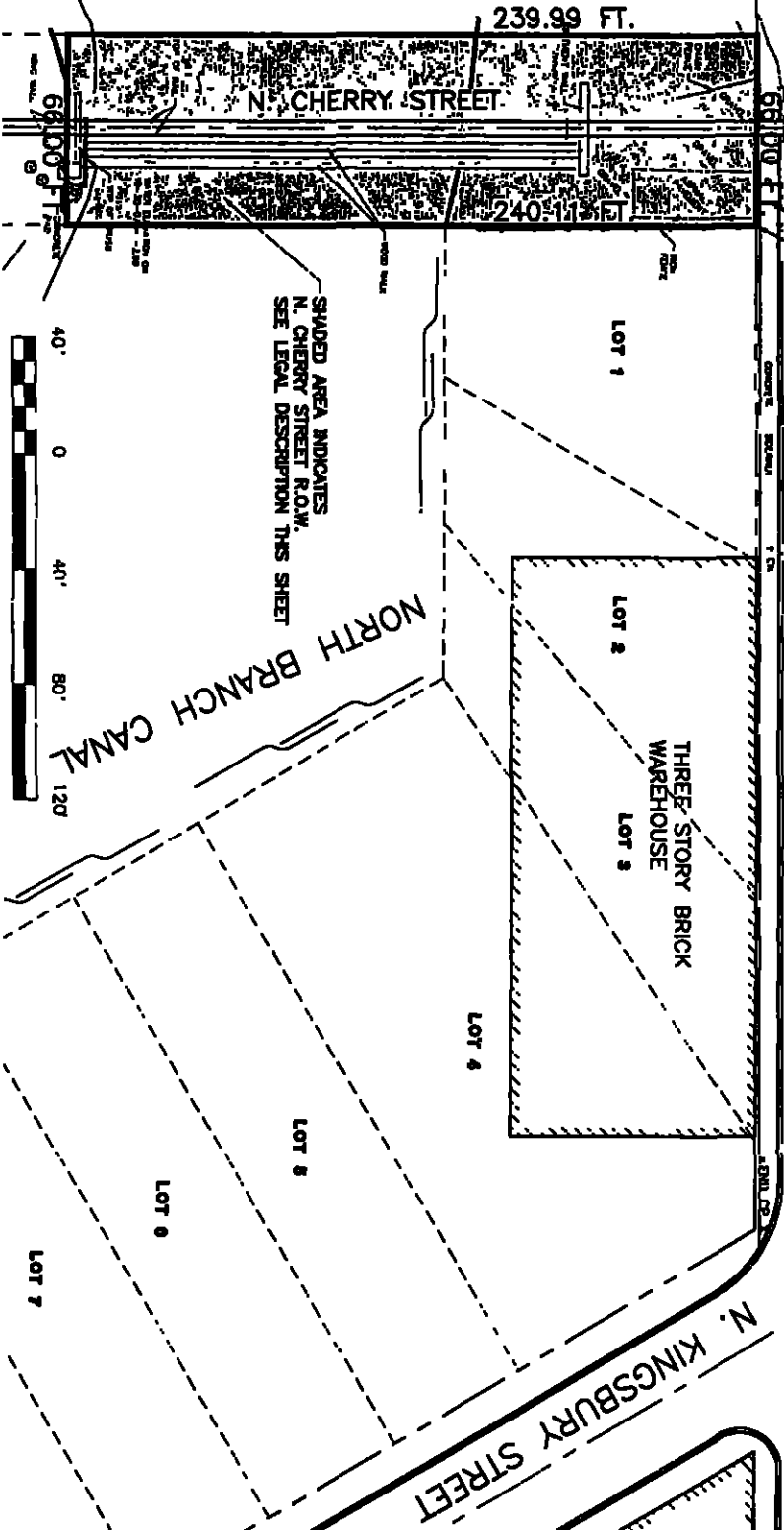
## **EXHIBIT E**

# NORTH CHERRY AVENUE, R.R. BRIDGE

LEGAL DESCRIPTION OF A RAILROAD BRIDGE, TO INCLUDE THE COUNTERWEIGHT ON NORTH SIDE OF SAID BRIDGE LYING IN THE WEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF NORTH AVENUE AND THE EAST RIGHT OF WAY LINE OF NORTH CHERRY AVENUE, THENCE 240.11 FEET SOUTH, ALONG THE EAST RIGHT OF WAY LINE OF SAID NORTH CHERRY AVENUE, THENCE WESTERLY AT A RIGHT ANGLE TO THE LAST DESCRIBED COURSE, 66.00 FEET TO THE WEST RIGHT OF WAY OF SAID NORTH CHERRY AVENUE, THENCE NORTH 240.0 FEET, ALONG SAID WEST RIGHT OF WAY LINE TO THE SOUTH RIGHT OF WAY LINE OF SAID NORTH AVENUE, THENCE EASTERLY, 66.00 FEET TO THE POINT-OF-BEGINNING, ALL IN COOK COUNTY, STATE OF ILLINOIS



POINT-OF-BEGINNING W. NORTH AVENUE



C.D.O.T.  
CHERRY STREET  
RAILROAD BRIDGE

**KUDRNA**  
& ASSOC. A.I.T.S. I.I.I.I

400 South Green Street Suite 200  
Chicago, Illinois 60607  
Phone (312) 738 1533  
Fax (312) 738 9992

200 North Cass Avenue  
Waukegan, Illinois 60059  
Phone (815) 944-0000  
Fax (815) 944 1122

Scale	1" = 40'
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## **EXHIBIT F**



KUDRNA  
& ASSOCIATES, LTD.

CIVIL ENGINEERING  
Planning • Design • Land Survey • Construction Management

## **NORTH CHERRY AVENUE R.R. BRIDGE**

LEGAL DESCRIPTION OF A RAILROAD BRIDGE, TO INCLUDE THE  
COUNTERWEIGHT ON THE NORTH SIDE OF SAID BRIDGE LYING IN THE WEST  
1/2 OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14  
EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS  
BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF  
NORTH AVENUE AND THE EAST RIGHT OF WAY LINE OF NORTH CHERRY  
AVENUE, THENCE 240.11 FEET SOUTH, ALONG THE EAST RIGHT OF WAY OF  
SAID NORTH CHERRY AVENUE, THENCE WESTERLY AT A RIGHT ANGLE TO  
THE LAST DESCRIBED COURSE, 66.00 FEET TO THE WEST RIGHT OF WAY OF  
SAID NORTH CHERRY AVENUE, THENCE NORTH 240.0 FEET, ALONG SAID  
WEST RIGHT OF WAY LINE TO THE SOUTH RIGHT OF WAY LINE OF SAID  
NORTH AVENUE, THENCE EASTERLY, 66.00 FEET TO THE POINT-OF-  
BEGINNING, ALL IN COOK COUNTY, STATE OF ILLINOIS

  
by Paul R. Stancato P.L.S.  
License #3054



## **EXHIBIT G**

## Chicago Terminal Railroad

CTM

CTM	Chicago Terminal Railroad
MTRA	Chicago Metropolitan Railroad Authority
UP	Union Pacific

**MTRA** Chicago Commuter Rail Authority  
**UP** Union Pacific

UP Union Pacific

**Connections CTM with UP at North Ave.  
Chicago IL**



14 ATTORNEY AVE

**Chyourn**

~~C&E Jct~~

North Ave  
Yard (UP)

Grand Ave  
Yard (UP)

**For more information, please contact:**

Tracy Davis 312-468-0203 Ext 14  
davis@novaapacific.com

## **EXHIBIT H**



